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KERAJAAN SARAWAK & ANOR

v.

ABDUL WAHAB ABDULLAH

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COURT OF APPEAL, PUTRAJAYA
ABDUL AZIZ MOHAMAD JCA
AZMEL MAAMOR JCA
ZALEHA ZAHARI JCA
[CIVIL APPEAL NO: Q-01-113-2004]

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27 FEBRUARY 2007

ADMINISTRATIVE LAW: *Judicial Review - High Court - Certiorari and mandamus - Public officers - Whether serving at pleasure of Government - Whether Government had discretion to choose where they*

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were to serve within public service - Whether wrong of High Court to review such exercise of discretionary power - Sarawak Forestry Corporation Ordinance 1995, ss. 11(3), 16(1) - Federal Constitution, art. 132(2), (2A)

STATUTORY INTERPRETATION: *Construction of statutes - Legislative intent - Governing principles - Whether to adopt approach that would promote purpose and object of statute - Purposive approach - Whether applied only where doubt arose from words used - Words used precise and unambiguous - Whether to apply literal and strict construction*

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- Sarawak Forestry Corporation Ordinance 1995, ss. 11(3), 16(1) - Federal Constitution, art. 132(2), (2A)

The respondent was an employee of the Sarawak Forests Department ('SFD') and was in that respect a public officer of the Sarawak State public service. On 1 January 1998 ('the appointed

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date'), the Government of Sarawak ('the Government') brought into force the Sarawak Forestry Corporation Ordinance 1995 ('the Ordinance'), and by that established the Sarawak Forestry Corporation ('SFC'). It was not in dispute that the SFC was to take over most of the duties of the SFD. Be that as it may,

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s. 11(3) of the Ordinance states that the SFD would continue to exercise the statutory duties not exercisable by the SFC under the Ordinance, whilst s. 16(1) ordains that the SFC is to "employ every person who immediately before the appointed date is in the employment of the SFD, and who was given an option by the

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Government and has opted to serve as an employee of the SFC".

The Government, in purported compliance of s. 16(1), gave the option to serve the SFC to some employees of the SFD. The Government however exempted the respondent and some other employees, with the result that they would continue to serve the SFD and remain in the public service of the Government. The respondent contended that s. 16(1) had imposed upon the Government a duty to grant to all employees serving in the SFD on the appointed date the option thereunder, and in the circumstances applied to the High Court for a review of the Government's decision and for orders of certiorari and mandamus against the same. The learned judge, upon the purposive approach that s. 16(1) was to cater for the manpower requirements of the SFC, subscribed to the same view and so allowed the relief sought for.

The Government appealed. Before the learned justices herein, the Government argued that the respondent's application for judicial review, based as it were on the premise that the respondent and those he represents had the right to choose "their own entity and destiny", is not sustainable in law and should have been rejected by the High Court judge. It was further argued that giving the words in s. 16(1) their plain and ordinary meaning, the Government clearly had a discretion whether or not to give the prescribed option to officers then serving the SFD. According to the Government further, such a construction is consistent with the principle enshrined in art. 132(2A) of the Federal Constitution that State public officers serve at the pleasure of the Yang di Pertua Negeri or the Government, and ought therefore to be accepted and preferred.

Held (allowing the appeal)
Per Zaleha Zahari JCA:

(1) It is a well established principle that the purposive approach to the interpretation of legislation only applies where doubt arises from the terms or words employed by the legislature. Where the words used are precise and unambiguous, then the literal and strict construction rule should apply. (para 16)

(2) The legal effect of the declaratory order and the order of mandamus issued by the judge in compelling the Government to give the option under s. 16(1) of the Ordinance has clearly produced a result which the law does not countenance and is clearly in contravention of

A art. 132(2A) of the Federal Constitution that public service officers serve at the pleasure of the Yang di Pertua Negeri or the Government. For so long as the respondent and those he represents remain State public officers, they serve at the pleasure of the Government and do not have the
B right to choose where they are to serve. (para 27)

(2a) Accordingly, the judge had erred in adopting a purposive approach to the interpretation of s. 16(1), which approach is clearly not in accord with the legislative intent. The judge
C had erred in reviewing the exercise of the discretionary power of the Government not to grant the option to the respondent and those whom he represents in a matter which is solely for the Government to decide. (para 29)

D **(3)** Upon reading the Ordinance as a whole and giving the words in s. 16(1) their plain, ordinary and unambiguous meaning, as well as in giving effect to s. 11(3) read together with art. 132(2A) of the Federal Constitution, and giving effect to the intention of the legislature that some officers
E must remain in the SFD, we hold that it is not mandatory for the Government to grant to all officers serving in the SFD on the appointed date the option under s. 16(1) of the Ordinance to join the employment of the SFC. (para 30)

[Order of learned judge set aside.]

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Bahasa Malaysia *translation of headnotes*

Responden adalah pekerja Jabatan Perhutanan Sarawak ('JPS') dan dengan itu merupakan seorang penjawat awam di dalam
G perkhidmatan awam Negeri Sarawak. Pada 1 Januari 1998 ('tarikh pelaksanaan'), Kerajaan Negeri Sarawak ('Kerajaan') telah menguatkuasakan Ordinan Perbadanan Perhutanan Sarawak 1995 ('Ordinan'), sekaligus menubuhkan Perbadanan Perhutanan Sarawak ('PPS'). Tidak dinafikan bahawa tujuan PPS adalah untuk
H mengambil-alih kebanyakan tugas-tugas JPS. Walaupun begitu, s. 11(3) Ordinan menyatakan bahawa JPS akan terus melaksanakan tugas-tugas statutori yang tidak dilaksanakan oleh PPS di bawah Ordinan, sementara s. 16(1) pula menuntut PPS supaya "mengambil bekerja setiap orang yang berada dalam
I perkhidmatan JPS semasa tarikh pelaksanaan, dan yang telah diberi opsyen oleh Kerajaan dan telah memilih untuk berkhidmat dengan PPS".

Kerajaan, dalam memenuhi kehendak s. 16(1), telah memberi opsyen kepada sebahagian pekerja JPS. Kerajaan bagaimanapun telah mengecualikan responden dan beberapa pekerja lain, yang berakibat mereka terus berkhidmat dengan JPS dan terus berada di dalam perkhidmatan awam Kerajaan. Responden mengatakan bahawa adalah menjadi tanggungjawab Kerajaan di bawah s. 16(1) untuk memberi opsyen kepada semua pekerja yang berkhidmat dengan JPS semasa tarikh pelaksanaan, dan dengan itu telah memohon Mahkamah Tinggi untuk menyemak keputusan Kerajaan dan membenarkan perintah-perintah certiorari dan mandamus terhadap keputusan tersebut. Yang arif hakim, dengan mengambil pendekatan purposif bahawa s. 16(1) adalah bagi memenuhi keperluan sumber manusia PPS, bersetuju dengan pandangan responden dan dengan itu telah membenarkan relif yang dipohon.

Kerajaan merayu. Di hadapan yang arif hakim-hakim di sini, Kerajaan berhujah bahawa permohonan semakan kehakiman responden, yang didasarkan atas pengataan bahawa responden dan mereka yang diwakilinya mempunyai hak untuk memilih "entiti dan destini mereka sendiri", adalah tidak boleh dipertahan di sisi undang-undang dan seharusnya ditolak oleh hakim Mahkamah Tinggi. Dihujahkan selanjutnya bahawa dengan memberi s. 16(1) maksudnya yang jelas dan biasa, Kerajaan mempunyai budibicara sama ada untuk memberi opsyen yang ditetapkan itu ataupun tidak kepada pegawai-pegawai yang berkhidmat dengan JPS ketika itu. Menurut Kerajaan lagi, pentafsiran sedemikian adalah konsisten dengan prinsip yang diterapkan di dalam art. 132(2A) Perlembagaan Persekutuan yang menyatakan bahawa penjawat-penjawat awam Negeri adalah berkhidmat atas ihsan Yang di Pertua Negeri atau Kerajaan, dan kerana itu ia harus diutamakan dan diterimapakai.

Diputuskan (membenarkan rayuan)
Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:

(1) Adalah menjadi prinsip mantap pentafsiran statut bahawa pendekatan purposif hanya terpakai jika terdapat keraguan pada perkataan dan terma-terma yang digunakan oleh badan perundangan. Maka itu, di mana perkataan-perkataan yang digunakan adalah jelas dan tidak kabur, kaedah pentafsiran literal dan ketat hendaklah dipakai.

(2) Kesan undang-undang perintah deklaratori dan perintah mandamus yang dibuat oleh hakim yang mengarahkan Kerajaan memberi opsyen di bawah s. 16(1) Ordinan telah membuahkan akibat yang tidak direstui oleh undang-undang dan jelas bertentangan dengan art. 132(2A) Perlembagaan Persekutuan yang menyatakan bahawa penjawat-penjawat awam berkhidmat atas ihsan Yang Di Pertua Negeri atau Kerajaan. Selagi responden dan mereka yang diwakilinya masih menjadi penjawat awam Negeri, mereka berkhidmat atas ihsan Kerajaan dan tidak mempunyai hak untuk memilih di mana mereka harus berkhidmat.

(2a) Oleh yang demikian, hakim telah khilaf dalam mengambil pendekatan purposif kepada pentafsiran s. 16(1), pentafsiran mana jelas tidak selaras dengan kehendak badan perundangan. Hakim khilaf apabila menyemak pelaksanaan budibicara oleh Kerajaan yang memutuskan untuk tidak memberi opsyen kepada responden dan mereka yang diwakilinya dalam hal yang hanya Kerajaan sahaja berhak untuk membuat keputusan.

(3) Dengan membaca Ordinan secara keseluruhan dan memberikan perkataan-perkataan di dalam s. 16(1) maksudnya yang jelas dan biasa, serta memberi kesan kepada s. 11(3) dibaca bersama dengan art. 132(2A) Perlembagaan Persekutuan, dan seterusnya dengan memberi kesan kepada kehendak badan perundangan bahawa sebahagian dari pegawai JPS harus terus berada dalam perkhidmatan JPS, kami memutuskan bahawa tidak ada kewajipan bagi Kerajaan untuk memberikan opsyen di bawah s. 16(1) Ordinan kepada kesemua pegawai yang berkhidmat dengan JPS pada tarikh pelaksanaan untuk berkhidmat dengan PPS.

Case(s) referred to:

Pengarah Pelajaran, Wilayah Persekutuan & Ors v. Loot Ting Yee [1982] 1 MLJ 68 ***(refd)***

Legislation referred to:

Federal Constitution, art 132(2), (2A)

Sarawak Forestry Corporation Ordinance 1995, ss. 2(2), 10, 11(3), 16(1), (2), (3)

Sarawak Interpretation Ordinance 2005, s. 8A

For the appellants - Datuk JC Fong; Sarawak State Attorney General
For the respondent - Abdul Rahman Hj Mohamad Hazmi; Abdul Rahman & Partners

[Appeal from High Court, Kuching; No: JR-03-2004-III(I)]

Reported by WA Sharif

JUDGMENT

Zaleha Zahari JCA:

[1] This appeal is against the decision of the Kuching High Court dated 7 December 2004. By that order the High Court granted the application sought by the applicant (respondent before us). It was the unanimous decision of this court on 14 September 2005 that this appeal be allowed with costs. Our reasons are as follows.

[2] The application for judicial review was instituted by the Respondent on his own behalf and as a representative of all other affected members of the Sarawak Forests Department Employees Union ("the Union") in the employment of the Sarawak Forests Department ("SFD") at 1 January 1998 ("the appointed date"), which date is the date of coming into force of the Sarawak Forestry Corporation Ordinance 1995 ("the Ordinance"). The 3rd respondent cited in the court below was no longer a party to the High Court proceedings after having successfully applied to be struck out on 28 May 2004.

[3] The factual matrix against which the application was allowed by the High Court Judge is as follows. The respondent, a "Penolong Pemelihara Hutan", is a public officer in the State Public Service, Sarawak serving in the SFD. He is also the President of the Union.

[4] Upon the coming into force of the Ordinance, the Sarawak Forestry Corporation (the 2nd appellant, subsequently referred as "SFC") was established to take over most of the functions of the SFD. The functions of the SFC are set out in s. 10, whilst its powers are set out in s. 11 of the Ordinance. We don't purpose to set them all out here at this stage. Suffice for us to state that s. 11(3) of the Ordinance expressly provides that the powers of the SFC shall not include the following:

A For the avoidance of doubt, the powers of the Corporation shall not include the powers vested in the Director under the Forests Ordinance or National Parks and Nature Reserves Ordinance or the Wild Life Protection Ordinance 1990.

B **[5]** It is not in issue that the respondent and those whom he represents were employees of the SFD on the appointed date. The complaint of the respondent rests on the decision of the 1st appellant, the Government of Sarawak ("the Government") not to grant the option prescribed under s. 16(1) of the Ordinance to all officers serving in the SFD on the appointed date to join the C newly established SFC.

[6] Section 16 falls under Part IV of the Ordinance entitled "PROVISIONS RELATING TO EMPLOYEES" which Part deals with the manpower requirements of the SFC. It reads as follows:

D 16. (1) The Corporation shall on the appointed day accept into its employment every person who immediately before that date is in the employment or service of the Forests Department, Sarawak and who was given an option by the Government and has opted to serve as an employee of the Corporation.

E (2) Every such person who opts under subsection (1) to serve as an employee of the Corporation shall be employed by the Corporation on terms and conditions of service to which he is entitled to immediately before the date mentioned in subsection F (1).

(3) Until such time as the terms and conditions of service including the conduct and discipline of its employees are drawn up for and by the Corporation the scheme and terms and conditions of service including the conduct and discipline of G officers in the State Public Service shall mutatis mutandis continue to apply to every person employed by the Corporation under subsection (1).

[7] We consider it necessary to also set out art. 132 of the Federal Constitution, which was raised in argument by the H appellants as the provision with which s. 16 of the Ordinance should be read. It reads as follows:

132. (1) For the purposes of this Constitution, the public services are:

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> (g) the public service of each State; and
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> (h) …
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> (2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public services other than those mentioned in paragraph (g) of Clause (1) may be regulated by Federal Law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong; and the qualifications for appointment and conditions of service of persons in the public service of any State may be regulated by State Law and, subject to the provisions of any such law, by the Ruler or Yang di-Pertua Negeri of that State.
>
> (2A) Except as expressly provided by this Constitution, every person who is a member of any of the services mentioned in paragraphs (a),(b),(c),(d),(f) and (h) of Clause (1) holds office during the pleasure of the Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Yang di-Pertua Negeri.

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[8] It is common ground that the respondent issued a letter to the Government on 25 March 2004 demanding that an option under s. 16 of the Ordinance be issued to all officers serving in the SFD on the appointed date within seven days of the said letter failing which legal proceedings would be instituted. Another letter to the same effect was issued by the respondent's legal adviser to the Government on 5 April 2004.

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[9] On 8 April 2004 the Sarawak State Attorney General's Chambers acting on behalf of the Government responded to the respondent's letter. According to this letter issued to the respondent's legal adviser, the respondent was informed that there was no legal duty on the part of the Government to issue the option under s. 16(1) of the Ordinance to all officers serving in the SFD on the appointed date as contended by the respondent.

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[10] In the light of the above, on 16 April 2004, the respondent filed an application for judicial review for an order of *certiorari* to quash the decision of the Government dated 8 April 2004. He also sought a declaratory order that it was mandatory for the Government to issue an option under s. 16 to all employees of

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the SFD who were in the employment of the SFD as at 1 January 1998, as well as an order of *mandamus* compelling the Government to issue such option. The application for judicial review made reference to ss. 4, 10, 11, 12, 13, 14 and 16 of the Ordinance. In argument before us, reliance was only placed on ss. 11 and 16 of the Ordinance.

The High Court Decision

[11] The learned judge found for the respondent and granted the orders sought. In making the decision which he did he considered it appropriate to apply s. 8A of the Sarawak Interpretation Ordinance 2005 and adopted a purposive approach in the interpretation of s. 16.

[12] The judge took the view that the enactment of s. 16 in its present terms was to cater for the human resource and manpower requirements of the SFC. He construed the intention of the legislature to be that the manpower requirements of the SFC were to be primarily sourced from the SFD. He took the view that the legislature was cognizant of the difference between being a member of the State Public Service and being an employee of a Statutory Corporation and of the fact that employees of the SFD affected by s. 16(1) of the Ordinance cannot be forced to accept a change in their status without their consent. The judge accordingly was of the view that the purpose of s. 16(2) and (3) of the Ordinance is to ensure that employees of the SFD who exercised the option to serve the SFC are employed on terms and conditions of service not less favourable than those which they were enjoying immediately before 1 January 1998, and the purpose of s. 16(1) is to enable employees of the SFD affected by the section to decide for themselves whether to serve in the SFC or to remain in the State Public Service.

[13] The judge then concluded that s. 16(1) of the Ordinance imposed a duty upon the Government to give to all officers serving in the SFD as at 1 January 1998 the option referred to in the said section. He interpreted the words in s. 16(1) to mean that it was the intention of the legislature to confer upon such employees the right to decide for themselves whether to exercise the s. 16(1) option offered, ie, to serve in the SFC or to remain in the State Public Service.

[14] On the argument advanced by the appellants that such a construction would contravene the constitutional principle that public officers serve during the pleasure of the Government as enshrined in arts. 132(2) and (2A) of the Federal Constitution, the judge summarily dismissed this argument on the ground that the authorities cited in support of such a proposition were inapplicable as those cases were distinguishable on the facts as they related to the transfer of a public officer, which this case was not.

[15] The main issue in the court below as well as before us is, what is the proper construction to be given to s. 16(1) of the Ordinance? Was the Government under a duty in law to issue to the respondent and those whom he represents, the option prescribed in s. 16(1) of the Ordinance?

[16] Before setting out the rival arguments in this appeal we would like to state the principles which we would be applying in making a considered decision on the issue in question. The governing principle of interpretation is that, in construing a statute, the function of the court is to discover the true intention of the legislature. In that process the court is under a duty to adopt an approach that promotes the purpose or object underlying that particular statute. To ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and what succeeds it, not merely at the clause itself. It is a well established principle that the purposive approach to the interpretation of legislation only applies where doubt arises from the terms or words employed by the legislature. Where the words used are precise and unambiguous, then the literal and strict construction rule should apply.

[17] The Sarawak Attorney General submitted that the learned judge erred in construing the words in s. 16(1) as imposing upon the Government a duty to grant to employees serving in the SFD on the appointed date the option under s. 16(1). The conditions prescribed in s. 16(1) were cumulative. It was mandatory for the SFC to accept into its employment a person who satisfied all of the conditions specified. They must have, immediately before the appointed date, been serving in the SFD. They must also have received an option by the Government to join the SFC. Upon being given such an option, such person must have exercised the option granted to serve as an employee of the SFC.

[18] The learned Sarawak Attorney General argued that there clearly is nothing in s. 16(1) making it mandatory for the Government to give the option to all officers serving in the SFD on the appointed date. Datuk Fong submitted that no words should therefore be imported into the said provision imposing such an obligation on the Government. Giving the words in s. 16(1) their plain and ordinary meaning, the Government has a discretion whether or not to give the prescribed option to officers then serving in the SFD.

[19] He emphasized the fact that although many of the functions and powers exercised by the SFD would be performed by the SFC subsequent to its establishment, the undisputed fact is that the SFD continues to exist to carry out the statutory duties and functions described by the Director of Forests, Datu Cheong Ek Choon, in his affidavit affirmed on 3 July 2004, *inter alia*, the preparation and granting or issue of forest licences, the issue of sawmill licences, the granting of authorization under s. 2(2) of the Forests Ordinance for the transfer of shares in forest licences issued to companies, the preparation and development of forest management plans as well as the rendering of assistance to the Government in the formulation of policies relating to forestry and sustainable forestry management. Section 11(3) of the Ordinance is especially significant.

[20] In this situation Datuk Fong submitted that the words in s. 16(1) must necessarily be interpreted to mean that the Government is the authority to decide as to which employee should be offered the option to join the SFC, and which employee is to continue to remain and serve in the SFD (or in the State Public Service) consequential upon the establishment of the SFC.

[21] According to Datuk Fong the judge therefore erred in not giving the words in s. 16(1) their plain and unambiguous meaning and in adopting a purposive approach of interpretation. Such an interpretation has produced a result which the law does not countenance and has created an injustice to the Government. By compelling the Government to grant an option to all public officers serving in the SFD on the appointed date, the judge clearly has not given proper consideration to the fact that the SFD continues to exercise the statutory duties and functions not exercisable by the SFC.

[22] Datuk Fong further submitted that the construction that it is for the Government to decide who should not be offered the option to move to serve in the newly created SFC but be retained to serve in the SFD or in the State Public Service would be in accord with the enshrined principle prescribed in art. 132(2A) of the Federal Constitution that State Public Officers serve at the pleasure of the Yang di-Pertua Negeri or the Government. For so long as the respondent and those whom he represents continue to be in the State Public Service, it is for the Government to decide where they should serve. The decision of the Government in this case is that, the respondent and those whom he represents, are to remain in the Public Service of the State. In this circumstance the application for judicial review based on the premise that the respondent and those whom he represents have the right to choose "their own entity and destiny" is not sustainable in law and should accordingly have been rejected by the High Court Judge.

[23] In his written submissions the respondent's counsel argued that read against the background facts, the words in s. 16(1) merely meant that the Government was the authority to eliminate and exclude those employees of the SFD who were not in the employment of the SFD as at the appointed date of 1 January 1998 from being issued the prescribed option. The statement of the Chief Minister and the Minister For Planning And Resource Management of Sarawak as reported in his "Perutusan" stating that the opportunity to serve the SFC would be given to most ("kebanyakan") of the 2000 employees of the SFD and the rest ('selebihnya') would remain in the SFD and Sarawak Biodiversity Centre or National Parks was supportive testimony of this proposition.

[24] As to the statutory functions not vested in the SFC by reason of s. 11(3) of the Ordinance which continue to be discharged and exercised by the Director of Forests, according to the respondent's counsel, this was not a material factor for consideration as s. 16 must to be taken as the governing provision by reason of it being the provision dealing with the manpower requirements of the SFC. The respondent's counsel submitted that, notwithstanding the fact that the Director of Forests retained certain statutory powers and duties, this should not be construed as precluding the Government from issuing the s. 16(1) option.

The respondent's counsel submitted that there was, on the facts of this case, non-compliance with, or a misinterpretation of s. 16(1), when the Government failed to issue the option to all employees of the SFD on the appointed date, contrary to their mandatory duty to do so. He submitted that the learned High Court Judge was right in issuing the orders which he did; in quashing the decision of the Government not to grant the s. 16(1) option to the respondent; in issuing the declaratory order sought, as well as in issuing an order of *mandamus* compelling the Government to issue the option under s. 16(1) of the Ordinance to all officers in the SFD on the appointed date to enable them to "choose their own entity and destiny", whether to exercise the option and be an employee by the SFC, or continue to serve in the SFD.

[25] Our findings are as follows: The only words in s. 16(1) of the Ordinance dealing with option are the words "who was given an option by the Government". The question here is whether the judge was right in adopting a purposive approach in the interpretation of s. 16(1) and in arriving at the conclusion which he subsequently did?

[26] On the facts of this case we took note of the fact that the Government has made a decision that the respondent and those whom he represents should remain in the service of the SFD. It is common ground that the respondent and those whom he represents, continue to be public officers of the State Public Service as a result of the option under s. 16(1) of the Ordinance not being issued to them, and that they have also not been dismissed or reduced in rank.

[27] After careful consideration of arguments before us we are in agreement with the submissions of the learned Sarawak Attorney General and not that of the respondent's counsel. The legal effect of the declaratory order and the order of *mandamus* issued by the judge in compelling the Government to give the option under s. 16(1) of the Ordinance has clearly produced a result which the law does not countenance and is clearly in contravention of art. 132(2A) of the Federal Constitution that Public Service Officers serve at the pleasure of the Yang di-Pertua Negeri or the Government. For so long as the respondent and those whom he

represents remain State Public Officers, they serve at the pleasure of the Government and do not have the right to choose where they are to serve. (See *Pengarah Pelajaran, Wilayah Persekutuan & Ors v. Loot Ting Yee* [1982] 1 MLJ 68, 69)

[28] As to the respondent's reliance on the statement of the Minister in the "Foreword" to the "Buku Cenderamata Sempena Seminar Pengkoporatan Menjamin Hak pekerja Dan Hutan Berkekalan", this statement does not assist the respondent but is in favour of the appellants. The word "most" means that a "majority", not all, will be offered the opportunity to join the SFC. There will be some officers in the SFD who would not be given the option to join the SFC by reason of the undisputed fact that the SFD continues to function to carry out duties and functions not transferred or vested in the SFC as provided by s. 11(3) of the Ordinance and the necessity of some officers having to be retained to continue to serve in the Departments mentioned by the Minister in that statement. These facts point strongly to the intention of the legislature that it is not mandatory for all officers serving in the SFD on the appointed date to be offered the option to join the SFC.

[29] We accordingly hold that the judge had erred in adopting a purposive approach to the interpretation of s. 16(1), which approach is clearly not in accord with the legislative intent. We also are of the opinion that the judge had erred in reviewing the exercise of the discretionary power of the Government not to grant the option to the respondent and those whom he represents in a matter which is solely for the Government to decide.

[30] To conclude, upon reading the Ordinance as a whole and giving the words in s. 16(1) their plain, ordinary and unambiguous meaning, as well as in giving effect to s. 11(3) read together with art. 132A (2) of the Federal Constitution, and in giving effect to the intention of the legislature that some officers must remain in the SFD, we hold that it is not mandatory for the Government to grant to all officers serving in the SFD on the appointed date the option under s. 16(1) of the Ordinance to join the employment of the SFC.

[31] For the reasons given, the appeal was allowed with costs. The orders of the learned judge of the court below were set aside. The application of the respondent was dismissed. We further directed that the costs of this appeal and the court below be paid to the appellants. The deposit shall be paid to the appellants towards taxed costs.